IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7753 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SODHA PARAMR AJMELSINH MANVARSINH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7753 of 2005

MR CB DASTOOR for Petitioner No. 1

MR DIPEN DESAI, AGP for Respondent No. 1

..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 03/05/2005

ORAL JUDGEMENT

#. Rule. Mr.Dipen Desai, learned AGP, waives service of

rule on behalf of the respondents.

#. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

#. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by respondent no.2 - State Government dated 28.9.2004 in Revision Application No.21 of 2004 in dismissing the same and confirming the order passed by the Collector, Kheda dated 31.12.2003 in Appeal No.36 of 2003 in dismissing the said appeal on the ground of limitation in challenging the order passed by the District Supply Officer, Kheda dated 27.12.2001 by which the District Supply Officer, Kheda has cancelled authorisation in favour of the petitioner to run the fair price shop at village Malitadi, Taluka Kapadwanj, District Kheda.

#. Mr.Dastoor, learned advocate appearing for the petitioner, has submitted that the petitioner is illiterate and poor person and was not knowing about correct legal position and was not aware of the fact that against the order dated 7.12.2001 passed by the District Supply Officer, Kheda, he can prefer the appeal before the Collector, and, therefore, there was delay in preferring the appeal. It is further submitted that, in fact, considering the allegations mentioned in the show cause notice, they are of technical in nature and to cancel the authorisation to run the fair price shop will be too harsh. He submitted that delay should not come in the way of the petitioner, if the petitioner has meritorious case. Under the circumstances, it is requested to allow the present petition and remand the matter to the appellate authority for deciding the appeal afresh on its own merits and in accordance with law. He also submitted that the petitioner is ready and willing to pay costs for preferring the appeal after a period of 22 months and the costs for remanding the matter to the appellate authority.

#. Mr.Desai, learned AGP, however, submitted that the impugned order has been passed on 27.12.2001 and it might be that the authority might have allotted the fair price shop to some other person and, therefore, if ultimately the matter is remanded and any final order is passed in favour of the petitioner, it will affect the other person. At this stage, Mr.Dastoor has submitted that, in fact, as per his instructions, the fair price shop for the aforesaid village has not been allotted to any other

person.

#. Considering the facts and circumstances of the case and considering the fact that the delay should not come in the way of the petitioner in deciding the appeal on merits if the petitioner has meritorious case and as the petitioner is ready and willing to pay costs for remanding the matter to the appellate authority if the fair price shop for the aforesaid village is not allotted to any other person, the appellate authority, i.e. Collector, Kheda is directed to decide and dispose of the appeal preferred by the petitioner against the order dated 27.12.2001 passed by the District Supply Officer, Kheda on its own merits and in accordance with law. Considering the facts and circumstances of the case and as agreed by the petitioner, the petitioner is directed to pay the costs of Rs.5000/- to be deposited with the Collector, Kheda within a period of four weeks from today and on deposit of the said amount, the Collector, Kheda may consider the appeal, as stated above, if the fair price shop is not allotted to any other person.

#. For the reasons stated above, this petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(M.R.Shah,J)

(pathan)